

Introduced by Senator Lowenthal

February 17, 2009

An act to amend Section 1464 of the Penal Code, and to amend Sections 27315, 27315.3, and 27360 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 177, as introduced, Lowenthal. Vehicles: child passengers.

(1) Existing law establishes rules of the road governing the operation of vehicles upon the highways, including, among other things, a mandatory seat belt law. A violation of these provisions is a crime.

This bill would delete related legislative findings and declarations and make other conforming changes in existing law.

(2) Existing law prohibits a parent or legal guardian, while present in a motor vehicle, from permitting his or her child or ward to be transported upon a highway in the vehicle without properly securing the child or ward in a rear seat in a child passenger restraint system meeting applicable federal safety standards, unless the child or ward is 6 years of age or older or weighs 60 pounds or more. Existing law imposes a similar prohibition on the driver of a vehicle, unless the parent or legal guardian of the child is also present in the vehicle and is not the driver. Existing law permits a child or ward under the age of 6 years who weighs less than 60 pounds to ride in the front seat of a motor vehicle if the child is properly secured in a child passenger restraint system that meets applicable federal motor vehicle safety standards, under specified circumstances, including, but not limited to, if all rear seats are already occupied by children under the age of 12 years.

This bill would, for purposes of allowing certain children to sit in the front seat under this exception, lower the age of the children occupying the rear seats from 12 to 8 years of age.

Because this bill would change the definition of an existing crime, the bill would impose a state-mandated local program.

(3) The bill would also make various nonsubstantive technical and conforming changes.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1464 of the Penal Code is amended to
2 read:

3 1464. (a) (1) Subject to Chapter 12 (commencing with Section
4 76000) of Title 8 of the Government Code, and except as otherwise
5 provided in this section, there shall be levied a state penalty in the
6 amount of ten dollars (\$10) for every ten dollars (\$10), or part of
7 ten dollars (\$10), upon every fine, penalty, or forfeiture imposed
8 and collected by the courts for all criminal offenses, including all
9 offenses, except parking offenses as defined in subdivision (i) of
10 Section 1463, involving a violation of a section of the Vehicle
11 Code or any local ordinance adopted pursuant to the Vehicle Code.

12 (2) Any bail schedule adopted pursuant to Section 1269b or bail
13 schedule adopted by the Judicial Council pursuant to Section 40310
14 of the Vehicle Code may include the necessary amount to pay the
15 penalties established by this section and Chapter 12 (commencing
16 with Section 76000) of Title 8 of the Government Code, and the
17 surcharge authorized by Section 1465.7, for all matters where a
18 personal appearance is not mandatory and the bail is posted
19 primarily to guarantee payment of the fine.

20 (3) The penalty imposed by this section does not apply to the
21 following:

22 (A) Any restitution fine.

1 (B) Any penalty authorized by Chapter 12 (commencing with
2 Section 76000) of Title 8 of the Government Code.

3 (C) Any parking offense subject to Article 3 (commencing with
4 Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

5 (D) The state surcharge authorized by Section 1465.7.

6 (b) Where multiple offenses are involved, the state penalty shall
7 be based upon the total fine or bail for each case. When a fine is
8 suspended, in whole or in part, the state penalty shall be reduced
9 in proportion to the suspension.

10 (c) When any deposited bail is made for an offense to which
11 this section applies, and for which a court appearance is not
12 mandatory, the person making the deposit shall also deposit a
13 sufficient amount to include the state penalty prescribed by this
14 section for forfeited bail. If bail is returned, the state penalty paid
15 thereon pursuant to this section shall also be returned.

16 (d) In any case where a person convicted of any offense, to
17 which this section applies, is in prison until the fine is satisfied,
18 the judge may waive all or any part of the state penalty, the
19 payment of which would work a hardship on the person convicted
20 or his or her immediate family.

21 (e) After a determination by the court of the amount due, the
22 clerk of the court shall collect the penalty and transmit it to the
23 county treasury. The portion thereof attributable to Chapter 12
24 (commencing with Section 76000) of Title 8 of the Government
25 Code shall be deposited in the appropriate county fund and 70
26 percent of the balance shall then be transmitted to the State
27 Treasury, to be deposited in the State Penalty Fund, which is hereby
28 created, and 30 percent to remain on deposit in the county general
29 fund. The transmission to the State Treasury shall be carried out
30 in the same manner as fines collected for the state by a county.

31 (f) The moneys so deposited in the State Penalty Fund shall be
32 distributed as follows:

33 (1) Once a month there shall be transferred into the Fish and
34 Game Preservation Fund an amount equal to 0.33 percent of the
35 state penalty funds deposited in the State Penalty Fund during the
36 preceding month, except that the total amount shall not be less
37 than the state penalty levied on fines or forfeitures for violation of
38 state laws relating to the protection or propagation of fish and
39 game. These moneys shall be used for the education or training of

1 department employees which fulfills a need consistent with the
2 objectives of the Department of Fish and Game.

3 (2) Once a month there shall be transferred into the Restitution
4 Fund an amount equal to 32.02 percent of the state penalty funds
5 deposited in the State Penalty Fund during the preceding month.
6 Those funds shall be made available in accordance with Section
7 13967 of the Government Code.

8 (3) Once a month there shall be transferred into the Peace
9 Officers' Training Fund an amount equal to 23.99 percent of the
10 state penalty funds deposited in the State Penalty Fund during the
11 preceding month.

12 (4) Once a month there shall be transferred into the Driver
13 Training Penalty Assessment Fund an amount equal to 25.70
14 percent of the state penalty funds deposited in the State Penalty
15 Fund during the preceding month.

16 (5) Once a month there shall be transferred into the Corrections
17 Training Fund an amount equal to 7.88 percent of the state penalty
18 funds deposited in the State Penalty Fund during the preceding
19 month. Money in the Corrections Training Fund is not continuously
20 appropriated and shall be appropriated in the Budget Act.

21 (6) Once a month there shall be transferred into the Local Public
22 Prosecutors and Public Defenders Training Fund established
23 pursuant to Section 11503 an amount equal to 0.78 percent of the
24 state penalty funds deposited in the State Penalty Fund during the
25 preceding month. The amount so transferred shall not exceed the
26 sum of eight hundred fifty thousand dollars (\$850,000) in any
27 fiscal year. The remainder in excess of eight hundred fifty thousand
28 dollars (\$850,000) shall be transferred to the Restitution Fund.

29 (7) Once a month there shall be transferred into the
30 Victim-Witness Assistance Fund an amount equal to 8.64 percent
31 of the state penalty funds deposited in the State Penalty Fund
32 during the preceding month.

33 (8) ~~(A)~~ Once a month there shall be transferred into the
34 Traumatic Brain Injury Fund, created pursuant to Section 4358 of
35 the Welfare and Institutions Code, an amount equal to 0.66 percent
36 of the state penalty funds deposited into the State Penalty Fund
37 during the preceding month. However, the amount of funds
38 transferred into the Traumatic Brain Injury Fund for the 1996–97
39 fiscal year shall not exceed the amount of five hundred thousand
40 dollars (\$500,000). Thereafter, funds shall be transferred pursuant

to the requirements of this section. Notwithstanding any other provision of law, the funds transferred into the Traumatic Brain Injury Fund for the 1997–98, 1998–99, and 1999–2000 fiscal years, may be expended by the State Department of Mental Health, in the current fiscal year or a subsequent fiscal year, to provide additional funding to the existing projects funded by the Traumatic Brain Injury Fund, to support new projects, or to do both.

~~(B) Any moneys deposited in the State Penalty Fund attributable to the assessments made pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code is repealed shall be utilized in accordance with paragraphs (1) to (8), inclusive, of this subdivision.~~

SEC. 2. Section 27315 of the Vehicle Code is amended to read:

27315. (a) ~~The Legislature finds that a mandatory seatbelt law will contribute to reducing highway deaths and injuries by encouraging greater usage of existing manual seatbelts, that automatic crash protection systems which require no action by vehicle occupants offer the best hope of reducing deaths and injuries, and that encouraging the use of manual safety belts is only a partial remedy for addressing this major cause of death and injury. The Legislature declares that the enactment of this section is intended to be compatible with support for federal safety standards requiring automatic crash protection systems and should not be used in any manner to rescind federal requirements for installation of automatic restraints in new cars.~~

~~(b) This section shall be known and may be cited as the Motor Vehicle Safety Act.~~

~~(c)~~

(b) (1) As used in this section, “motor vehicle” means a passenger vehicle, a motortruck, or a truck tractor, but does not include a motorcycle.

(2) For purposes of this section, a “motor vehicle” also means a farm labor vehicle, regardless of the date of certification under Section 31401.

~~(d)~~

(c) (1) A person shall not operate a motor vehicle on a highway unless that person and all passengers 16 years of age or over are properly restrained by a safety belt. This paragraph does not apply to the operator of a taxicab, as defined in Section 27908, when the

1 taxicab is driven on a city street and is engaged in the transportation
2 of a fare-paying passenger. The safety belt requirement established
3 by this paragraph is the minimum safety standard applicable to
4 employees being transported in a motor vehicle. This paragraph
5 does not preempt more stringent or restrictive standards imposed
6 by the Labor Code or another state or federal regulation regarding
7 the transportation of employees in a motor vehicle.

8 (2) The operator of a limousine for hire or the operator of an
9 authorized emergency vehicle, as defined in subdivision (a) of
10 Section 165, shall not operate the limousine for hire or authorized
11 emergency vehicle unless the operator and any passengers six
12 years of age or over or weighing 60 pounds or more in the front
13 seat are properly restrained by a safety belt.

14 (3) The operator of a taxicab shall not operate the taxicab unless
15 any passengers six years of age or over or weighing 60 pounds or
16 more in the front seat are properly restrained by a safety belt.

17 ~~(e)~~

18 (d) A person 16 years of age or over shall not be a passenger in
19 a motor vehicle on a highway unless that person is properly
20 restrained by a safety belt. This subdivision does not apply to a
21 passenger in a sleeper berth, as defined in subdivision (x) of Section
22 1201 of Title 13 of the California Code of Regulations.

23 ~~(f)~~

24 (e) An owner of a motor vehicle, including an owner or operator
25 of a taxicab, as defined in Section 27908, or a limousine for hire,
26 operated on a highway shall maintain safety belts in good working
27 order for the use of *the* occupants of the vehicle. The safety belts
28 shall conform to motor vehicle safety standards established by the
29 United States Department of Transportation. This subdivision,
30 however, does not require installation or maintenance of safety
31 belts if *it is* not required by the laws of the United States applicable
32 to the vehicle at the time of its initial sale.

33 ~~(g)~~

34 (f) This section does not apply to a passenger or operator with
35 a physically disabling condition or medical condition that would
36 prevent appropriate restraint in a safety belt, if the condition is
37 duly certified by a licensed physician and surgeon or by a licensed
38 chiropractor who shall state the nature of the condition, as well as
39 the reason the restraint is inappropriate. This section also does not
40 apply to a public employee, ~~when~~ *if the public employee is in an*

1 authorized emergency vehicle as defined in paragraph (1) of
2 subdivision (b) of Section 165, or to a passenger in a seat behind
3 the front seat of an authorized emergency vehicle as defined in
4 paragraph (1) of subdivision (b) of Section 165 operated by the
5 public employee, unless required by the agency employing the
6 public employee.

7 ~~(h)~~

8 (g) Notwithstanding subdivision (a) of Section 42001, a violation
9 of subdivision ~~(d), (e), or (f)~~ (c), (d), or (e) is an infraction
10 punishable by a fine of not more than twenty dollars (\$20) for a
11 first offense, and a fine of not more than fifty dollars (\$50) for
12 each subsequent offense. In lieu of the fine and any penalty
13 assessment or court costs, the court, pursuant to Section 42005,
14 may order that a person convicted of a first offense attend a school
15 for traffic violators or another court-approved program in which
16 the proper use of safety belts is demonstrated.

17 ~~(i)~~

18 (h) In a civil action, a violation of subdivision ~~(d), (e), or (f)~~ (c),
19 (d), or (e) or information of a violation of subdivision ~~(h)~~ (g) does
20 not establish negligence as a matter of law or negligence per se
21 for comparative fault purposes, but negligence may be proven as
22 a fact without regard to the violation.

23 ~~(j)~~

24 (i) If the United States Secretary of Transportation fails to adopt
25 safety standards for manual safety belt systems by September 1,
26 1989, a motor vehicle manufactured after that date for sale or sold
27 in this state shall not be registered unless it contains a manual
28 safety belt system that meets the performance standards applicable
29 to automatic crash protection devices adopted by the United States
30 Secretary of Transportation pursuant to Federal Motor Vehicle
31 Safety Standard No. 208 (49 C.F.R. 571.208) as in effect on
32 January 1, 1985.

33 ~~(k)~~

34 (j) A motor vehicle offered for original sale in this state ~~which~~
35 *that* has been manufactured on or after September 1, 1989, shall
36 comply with the automatic restraint requirements of Section
37 S4.1.2.1 of Federal Motor Vehicle Safety Standard No. 208 (49
38 C.F.R. 571.208), as published in Volume 49 of the Federal
39 Register, No. 138, page 29009 (*July 17, 1984*). An automobile
40 manufacturer that sells or delivers a motor vehicle subject to this

subdivision, and fails to comply with this subdivision, shall be punished by a fine of not more than five hundred dollars (\$500) for each sale or delivery of a noncomplying motor vehicle.

~~(h)~~

(k) Compliance with subdivision ~~(j)~~ or ~~(k)~~ (i) or (j) by a manufacturer shall be made by self-certification in the same manner as self-certification is accomplished under federal law.

~~(m)~~

(l) This section does not apply to a person actually engaged in delivery of newspapers to customers along the person's route if the person is properly restrained by a safety belt prior to commencing and subsequent to completing delivery on the route.

~~(n)~~

(m) This section does not apply to a person actually engaged in collection and delivery activities as a rural delivery carrier for the United States Postal Service if the person is properly restrained by a safety belt prior to stopping at the first box and subsequent to stopping at the last box on the route.

~~(o)~~

(n) This section does not apply to a driver actually engaged in the collection of solid waste or recyclable materials along that driver's collection route if the driver is properly restrained by a safety belt prior to commencing and subsequent to completing the collection route.

~~(p)~~

(o) Subdivisions ~~(d), (e), (f), (g), and (h)~~ (c), (d), (e), (f), and (g) shall become inoperative immediately upon the date that the United States Secretary of Transportation, or his or her delegate, determines to rescind the portion of the Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) ~~which~~ that requires the installation of automatic restraints in new motor vehicles, except that those subdivisions shall not become inoperative if the secretary's decision to rescind that Standard No. 208 is not based, in any respect, on the enactment or continued operation of those subdivisions.

SEC. 3. Section 27315.3 of the Vehicle Code is amended to read:

27315.3. (a) As used in this section, "passenger motor vehicle" means ~~any~~ a passenger vehicle as defined in Section 465 and ~~any~~ a motortruck as defined in Section 410 of less than 6,001 pounds

1 unladen weight, but does not include a motorcycle as defined in
2 Section 400.

3 (b) Every sheriff's department and city police department and
4 the Department of the California Highway Patrol shall maintain
5 safety belts in good working order for the use of occupants of ~~any~~
6 ~~a vehicle which~~ that it operates on a highway for the purpose of
7 patrol. The safety belts shall conform to motor vehicle safety
8 standards established by the United States Department of
9 Transportation. This subdivision does not, however, require
10 installation or maintenance of safety belts where not required by
11 the laws of the United States applicable to the vehicle at the time
12 of its initial sale.

13 (c) Notwithstanding subdivision (a) of Section 42001, ~~any a~~
14 violation of subdivision (b) is an infraction punishable by a fine,
15 including all penalty assessments and court costs imposed on the
16 convicted department, of not more than twenty dollars (\$20) for
17 a first offense, and a fine, including all penalty assessments and
18 court costs imposed on the convicted department, of not more than
19 fifty dollars (\$50) for each subsequent offense.

20 (d) (1) For ~~any a~~ violation of subdivision (b), in addition to the
21 fines provided for pursuant to subdivision (c) and the penalty
22 assessments provided for pursuant to Section 1464 of the Penal
23 Code, an additional penalty assessment of two dollars (\$2) shall
24 be levied for ~~any a~~ first offense, and an additional penalty
25 assessment of five dollars (\$5) shall be levied for any subsequent
26 offense.

27 (2) All money collected pursuant to this subdivision shall be
28 utilized in accordance with Section 1464 of the Penal Code.

29 (e) In ~~any a~~ civil action, a violation of subdivision (b) or
30 information of a violation of subdivision (c) shall not establish
31 negligence as a matter of law or negligence per se for comparative
32 fault purposes, but negligence may be proven as a fact without
33 regard to the violation.

34 (f) Subdivisions (b) and (c) shall become inoperative
35 immediately upon the date that the Secretary of the United States
36 Department of Transportation, or his or her delegate, determines
37 to rescind the portion of the Federal Motor Vehicle Safety Standard
38 No. 208 (49 C.F.R. 571.208) ~~which that~~ requires the installation
39 of automatic restraints in new passenger motor vehicles, except
40 that those subdivisions shall not become inoperative if the

1 secretary's decision to rescind Standard No. 208 is not based, in
2 any respect, on the enactment or continued operation of those
3 subdivisions or subdivisions ~~(d)~~ (c) to ~~(h)~~ (g), inclusive, of Section
4 27315.

5 SEC. 4. Section 27360 of the Vehicle Code is amended to read:

6 27360. (a) A parent or legal guardian, when present in a motor
7 vehicle, as defined in Section 27315, may not permit his or her
8 child or ward to be transported upon a highway in the motor vehicle
9 without properly securing the child or ward in a rear seat in a child
10 passenger restraint system meeting applicable federal motor vehicle
11 safety standards, unless the child or ward is one of the following:

12 (1) Six years of age or older.

13 (2) Sixty pounds or more.

14 (b) (1) A driver may not transport on a highway a child in a
15 motor vehicle, as defined in Section 27315, without properly
16 securing the child in a rear seat in a child passenger restraint system
17 meeting applicable federal motor vehicle safety standards, unless
18 the child is one of the following:

19 (A) Six years of age or older.

20 (B) Sixty pounds or more.

21 (2) This subdivision does not apply to a driver if the parent or
22 legal guardian of the child is also present in the vehicle and is not
23 the driver.

24 (c) (1) For purposes of subdivisions (a) and (b), and except as
25 provided in paragraph (2), a child or ward under the age of six
26 years who weighs less than 60 pounds may ride in the front seat
27 of a motor vehicle; if *the child is* properly secured in a child
28 passenger restraint system that meets applicable federal motor
29 vehicle safety standards, under any of the following circumstances:

30 (A) There is no rear seat.

31 (B) The rear seats are side-facing jump seats.

32 (C) The rear seats are rear-facing seats.

33 (D) The child passenger restraint system cannot be installed
34 properly in the rear seat.

35 (E) All rear seats are already occupied by children under the
36 age of ~~12~~ *eight* years.

37 (F) Medical reasons necessitate that the child or ward not ride
38 in the rear seat. The court may require satisfactory proof of the
39 child's medical condition.

1 (2) A child or ward may not ride in the front seat of a motor
2 vehicle with an active passenger airbag if the child or ward is one
3 of the following:

4 (A) Under one year of age.

5 (B) Less than 20 pounds.

6 (C) Riding in a rear-facing child passenger restraint system.

7 (d) (1) (A) A first offense under this section is punishable by
8 a fine of one hundred dollars (\$100), except that the court may
9 reduce or waive the fine if the defendant establishes to the
10 satisfaction of the court that he or she is economically
11 disadvantaged, and the court, instead, refers the defendant to a
12 community education program that includes, but is not limited to,
13 education on the proper installation and use of a child passenger
14 restraint system for children of all ages, and provides certification
15 to the court of completion of that program. Upon completion of
16 the program, the defendant shall provide proof of participation in
17 the program. If an education program on the proper installation
18 and use of a child passenger restraint system is not available within
19 50 miles of the residence of the defendant, the requirement to
20 participate in that program shall be waived. If the fine is paid,
21 waived, or reduced, the court shall report the conviction to the
22 department pursuant to Section 1803.

23 (B) The court may require a defendant described under this
24 section to attend an education program that includes demonstration
25 of proper installation and use of a child passenger restraint system
26 and provides certification to the court that the defendant has
27 presented for inspection a child passenger restraint system that
28 meets applicable federal safety standards.

29 (2) (A) A second or subsequent offense under this section is
30 punishable by a fine of two hundred fifty dollars (\$250), no part
31 of which may be waived by the court, except that the court may
32 reduce or waive the fine if the defendant establishes to the
33 satisfaction of the court that he or she is economically
34 disadvantaged, and the court, instead, refers the defendant to a
35 community education program that includes, but is not limited to,
36 education on the proper installation and use of child passenger
37 restraint systems for children of all ages, and provides certification
38 to the court of completion of that program. Upon completion of
39 the program, the defendant shall provide proof of participation in
40 the program. If an education program on the proper installation

1 and use of a child passenger restraint system is not available within
2 50 miles of the residence of the defendant, the requirement to
3 participate in that program shall be waived. If the fine is paid,
4 waived, or reduced, the court shall report the conviction to the
5 department pursuant to Section 1803.

6 (B) The court may require a defendant described under this
7 section to attend an education program that includes demonstration
8 of proper installation and use of a child passenger restraint system
9 and provides certification to the court that the defendant has
10 presented for inspection a child passenger restraint system that
11 meets applicable federal safety standards.

12 (e) Notwithstanding any other provision of law, the fines
13 collected for a violation of this section shall be allocated as follows:

14 (1) (A) Sixty percent to health departments of local jurisdictions
15 where the violation occurred, to be used for a community education
16 program that includes, but is not limited to, demonstration of the
17 installation of a child passenger restraint system for children of all
18 ages and also assists an economically disadvantaged family in
19 obtaining a restraint system through a low-cost purchase or loan.
20 The county or city health department shall designate a coordinator
21 to facilitate the creation of a special account and to develop a
22 relationship with the court system to facilitate the transfer of funds
23 to the program. The county or city may contract for the
24 implementation of the program. Prior to obtaining possession of
25 a child passenger restraint system pursuant to this section, a person
26 shall attend an education program that includes demonstration of
27 proper installation and use of a child passenger restraint system.

28 (B) As the proceeds from fines become available, county or city
29 health departments shall prepare and maintain a listing of all child
30 passenger restraint low-cost purchase or loaner programs in their
31 counties, including a semiannual verification that all programs
32 listed are in existence. Each county or city shall forward the listing
33 to the Office of Traffic Safety in the Business, Transportation and
34 Housing Agency and the courts, birthing centers, community child
35 health and disability prevention programs, county clinics, prenatal
36 clinics, women, infants, and children programs, and county
37 hospitals in that county, who shall make the listing available to
38 the public. The Office of Traffic Safety shall maintain a listing of
39 all of the programs in the state.

1 (2) Twenty-five percent to the county or city for the
2 administration of the program.

3 (3) Fifteen percent to the city, to be deposited in its general fund
4 except that, if the violation occurred in an unincorporated area,
5 this amount shall be allocated to the county for purposes of
6 paragraph (1).

7 SEC. 5. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.